

THOMAS GILLESPIE

IBLA 82-705

Decided June 17, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim null and void ab initio. CA MC 78580.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land  
-- Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

APPEARANCES: Thomas Gillespie, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Thomas Gillespie appeals the March 11, 1982, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Teddy Bear lode mining claim, CA MC 78580, null and void ab initio because the claim was located on land previously withdrawn from operation of the mining laws.

Appellant asserts the claim is situated in the E 1/2 NE 1/4 sec. 23, T. 9 N., R. 10 E., Mount Diablo meridian, El Dorado County, California, and not on the land assumed by BLM. He states the claim has been worked by his father and grandfather before him over the past 75 years. 1/

The status report submitted by BLM shows the following information as to the NE 1/4 sec. 23, T. 9 N., R. 10 E.:

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1/ There is no information in the record to show that any earlier claim on this land was recorded with BLM as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976). Any such preexisting claim must be deemed conclusively to have been abandoned if a copy of the location notice was not recorded with BLM on or before Oct. 22, 1979.

Patented mineral entries, patents numbered 5276 and 269000 in the NE 1/4 NE 1/4

Patent 24590 in the NW 1/4 NE 1/4

Patented selection 2 in the SW 1/4 NE 1/4

Lot 1 in NE 1/4 NE 1/4: First Form Reclamation withdrawal, November 16, 1932

SE 1/4 NE 1/4: First Form Reclamation withdrawal, January 15, 1942

E 1/2 SE 1/4 NE 1/4, E 1/2 lot 1, unpatented Mineral Survey 4098:  
withdrawn for Central Valley Project, Public Land Order 2729, July 17, 1962

All of the above actions made the entire NE 1/4 sec. 23 unavailable for appropriation under the mining laws.

The location notice filed with BLM by appellant December 30, 1980, states the claim was located December 12, 1980.

[1] Mining claims located on land previously withdrawn from appropriation under the mining laws are null and void ab initio. Richard Thorpe, 59 IBLA 176 (1981); Clarence E. Fitzgerald, 55 IBLA 31 (1981); Allen L. Brandon, Sr., 53 IBLA 251 (1981); Marvin Mack, 51 IBLA 30 (1980); George H. Fennimore, 50 IBLA 250 (1980).

As appellant has not shown that his claim is situated on land open to operation of the mining laws at the time of his asserted location, the BLM decision must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Bruce R. Harris  
Administrative Judge

